

**REMARKS**

At the time of the Office Action dated March 9, 2007, claims 1-20 were pending and rejected in this application.

**CLAIMS 7-9 ARE REJECTED UNDER 35 U.S.C. § 101**

On page 2 of the Office Action, the Examiner asserted that the claimed invention, as recited in claims 7-9, is directed to non-statutory subject matter. This rejection is respectfully traversed.

On page 2 of the Office Action, the Examiner asserted the following with regard to claims 7-9:

Claims 7-9 set forth a memory leak detection and reporting system that is computer program claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

The Examiner's analysis appears to be predicated on the belief that the claimed memory leak detection and reporting system is "computer listings per se." In this regard, Applicants respectfully submit that the Examiner's analysis is flawed. Based upon the Examiner's analysis, it appears that the Examiner misunderstands exactly what constitutes software (i.e., computer listings) *per se*. In particular, Applicants respectfully submit that the Examiner is confused as to exact meaning of the phrase "per se." The definition of "per se" is the following:<sup>1</sup>

By itself; in itself; taken alone; by means of itself; through itself; inherently; in isolation; unconnected with other matters; simply as such; in its own nature without reference to its relation.

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<sup>1</sup> Black's Law Dictionary 1142 (6th ed. 1990).

Thus, software *per se* is an abstract idea embodied by the software alone without anything else.

For this reason, software *per se* is deemed to be non-statutory subject matter.

Software alone is incapable of doing anything because it is disconnected from hardware. Software alone is also covered under M.P.E.P. § 2106.01 with regard to "functional descriptive material." Claims 7-9, however, are not directed to "functional descriptive material." Instead, claims 7-9 are directed to a system.

Claim 7 recites "a pool manager programmed ..." (emphasis added). Software alone is incapable of being "programmed." Instead, hardware (i.e., a device) is programmed, and software alone is the program. Moreover, Applicants are entirely unclear as to why the claimed "data store" is also not considered hardware. Software alone is incapable of storing anything since it is functional descriptive material.

Therefore, for the reasons stated above, Applicants respectfully submit that the imposed rejection of claims 7-9 under 35 U.S.C. § 101 is not viable, and hence, Applicants solicit withdrawal thereof.

**CLAIMS 1-3, 5-17, AND 19-20 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS**

**BASED UPON DAHLSTEDT ET AL., U.S. PATENT PUBLICATION NO. 2004/0133895, IN VIEW OF**

**TARDITI ET AL., U.S. PATENT NO. 6,625,808 (HEREINAFTER TARDITI)**

On pages 3-8 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have arrived at the claimed invention based upon the combination of Dahlstedt and Tarditi. This rejection is respectfully traversed.

**Claim 1**

On page 3 of the Office Action, the Examiner asserted the following with regard to the teachings of Dahlstedt:

reporting an identity of a corresponding one of said calling code segments (Dahlstedt, [0008], "the invention comprises a system for determining potential memory leaks in a run-time environment, ... an object temperature analyzer that determines the status of warm objects and cold objects in said memory, and the links between said warm and cold objects, and, a report mechanism that reports information about said links, for use in determining potential memory leaks", also see, FIG. 3, [0021], Dahlstedt teaches cold objects as determined to have become overly idle, "The time stamp for each object is checked against the current system time, and those objects that have a time stamp older than a particular period of time are marked as cold objects").

The Examiner further asserted the following on page 4 of the Office Action with regard to the teachings of Tarditi and what Dahlstedt fails to teach:

Dahlstedt does not explicitly teach identifying calling code segments receiving said allocated resources. However, Tarditi teaches identifying calling code segments receiving said allocated resources (Tarditi, FIG. 4, call stack 402 or 406, col. 11, lines 10-49, "a live object is an object which has an identifiable pointer in the root set, e.g., call stack 402 or 406... for each transition from a GC frame to a non-GC frame in the call stack 402, creation function 304 allocates space on the stack frame for a transition record, e.g., transition records 420 and 424. The transition store select pointer and state information, as well as a pointer to the immediate past transition record, e.g., transition record 424.").

The Examiner's analysis present a logical inconsistency. The Examiner's admits that Dahlstedt does not teach the claimed "identifying calling code segments receiving said allocated resources." However, the Examiner asserts that Dahlstedt teaches "reporting an identity of a

corresponding one of said calling code segments." The logical inconsistency of the Examiner's analysis can be best summarized by the question: how can Dahlstedt teach reporting an identity of a calling code segment when Dahlstedt does not teach identifying the calling code segment? The calling code segment must first be identified before its identity can be reported. Therefore, the Examiner's assertion that Dahlstedt teaches "reporting an identity of a corresponding one of said calling code segments" cannot be true since Dahlstedt has not identified the calling code segments.

With regard to the Examiner's asserted rationale to modify Dahlstedt in view of Tarditi, the Examiner asserted the following in the first full paragraph on page 4 of the Office Action:

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Dahlstedt to include identifying calling code segments receiving said allocated resources using the teaching of Tarditi. The modification would be obvious because one of ordinary skill in the art would be motivated to facilitate automated memory management among heterogeneous components of a computer program (Tarditi, col. 4, lines 40-42).

The Examiner's asserted benefit is little more than a generalization regarding a possible benefit resulting from the entirety of the teachings of Tarditi. The Examiner's analysis, however, has failed to establish that this particular benefit would result solely from the Examiner's proposed modification to Dahlstedt. In this regard, Applicants respectfully submit that the Examiner has failed to establish a nexus between the specific teachings relied upon within Tarditi for the proposed modifications to Dahlstedt and the asserted benefit to "facilitate automated memory management among heterogeneous components of a computer program."

A nexus is required between the proposed modification and the asserted benefit of the modification. The need for a nexus between the proposed modification and the asserted benefit of the modification is to establish that one having ordinary skill in the art would have been

realistically impelled to modify the prior art in the manner suggested by the Examiner.

Otherwise, the Examiner could assert that any possible modification taught by Tarditi could be based upon any possible benefit taught by Tarditi. Thus, for the reasons stated above, Applicants respectfully submit that the Examiner has failed to set forth a prima facie case of obviousness for lack of a proper, realistic rationale to modify Dahlstedt in view of Tarditi.

### Claim 3

The Examiner asserted that column 11, lines 2-7 of Tarditi teaches the claimed "performing said detecting and reporting steps in a separate thread of execution." Upon review, Applicants note that this passage refers to two separate threads. However, Applicants are unclear as to where, specifically, Tarditi teaches that the detecting and reporting steps are performed in a separate thread of execution.

### Claim 5

The Examiner cited Fig. 4 and paragraph [0022] of Dahlstedt to teach the claimed "performing said detecting and reporting steps responsive to allocating one of said resources in said resource pool." As already noted above, however, Dahlstedt fails to teach the claimed reporting step. Thus, Dahlstedt cannot teach the all the limitations of claim 5.

### Claim 7

Independent claim 7 has been amended to include the claimed detecting and reporting limitations previously presented in claim 1, and Applicants incorporate herein, as also applying to claim 7, the arguments Applicants previously presented with regard to claim 1.

Claim 10

Independent claim 10 includes limitations comparable to the limitations in claim 1, and Applicants incorporate herein, as also applying to claim 10, the arguments Applicants previously presented with regard to claim 1.

Therefore, for the reasons presented above, Applicants respectfully submit that the imposed rejection of claims 1-3, 5-17, and 19-20 under 35 U.S.C. § 103 for obviousness based upon Dahlstedt in view of Tarditi is not viable and, hence, Applicants solicit withdrawal thereof.

**CLAIMS 4 AND 18 ARE REJECTED UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED  
UPON DAHLSTEDT IN VIEW OF TARDITI AND FURTHER IN VIEW OF FU, U.S. PATENT  
PUBLICATION NO. 2004/0172579 (HEREINAFTER FU)**

On page 9 of the Office Action, the Examiner asserted that one having ordinary skill in the art would have arrived at the claimed invention based upon the combination of Dahlstedt, Tarditi, and Fu. This rejection is respectfully traversed.

Claims 4 and 18 respectively depend from independent claims 1 and 15 and Applicants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1 and 15 under 35 U.S.C. § 103 for obviousness based upon Dahlstedt in view of Tarditi. The tertiary reference to Fu does not cure the argued deficiencies of Dahlstedt in view of Tarditi. Accordingly, even if the claimed invention were combined in the manner suggested by the Examiner, the proposed combination of references would not yield the claimed invention.

Moreover, upon reviewing the teachings in Fu cited by the Examiner, Applicants are entirely unclear where Fu teaches the limitations recited in claims 4 and 18. For example, Applicants are unable to determine what specific teaching in Fu is being relied upon to teach the claimed "inducing a placebo error condition in close proximity to code for allocating said resource."

Therefore, Applicants respectfully submit that the imposed rejection of claims 4 and 18 under 35 U.S.C. § 103 for obviousness based upon Dahlstedt in view of Tarditi and Fu is not viable and, hence, Applicants solicit withdrawal thereof.

Applicants have made every effort to present claims which distinguish over the prior art, and it is believed that all claims are in condition for allowance. However, Applicants invite the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. Accordingly, and in view of the foregoing remarks, Applicants hereby respectfully request reconsideration and prompt allowance of the pending claims.

Although Applicants believe that all claims are in condition for allowance, the Examiner is directed to the following statement found in M.P.E.P. § 706(II):

When an application discloses patentable subject matter and it is apparent from the claims and the applicant's arguments that the claims are intended to be directed to such patentable subject matter, but the claims in their present form cannot be allowed because of defects in form or omission of a limitation, the examiner should not stop with a bare objection or rejection of the claims. The examiner's action should be constructive in nature and when possible should offer a definite suggestion for correction.

Application No.: 10/723,979

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

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Respectfully submitted,

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